

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Multiple Address Systems)
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
WT Docket No. 97-81

COMMENTS OF ITRON, INC.

Itron, Inc. ("Itron"), by its attorneys, hereby comments on the "Emergency Request for Limited Exception to Application Freeze" (the "Emergency Request") filed by the "CII Petitioners" in the above-referenced proceeding on July 23, 1999. For the reasons set forth below, Itron supports the Emergency Request.

DISCUSSION

In the Commission's Further Notice of Proposed Rulemaking and Order ("FNPRM") in the above-referenced proceeding (rel. July 1, 1999), the Commission instituted a freeze on applications for Multiple Address Systems ("MAS") in the 928/952/956 MHz bands (the "900 MHz bands"). In the Emergency Request, the CII Petitioners asked the Commission to exempt from the freeze 900 MHz license applications involving the utility, petroleum and railroad industries (the "Critical Infrastructure Industries").

Itron supports that request. Itron manufactures automatic meter reading equipment whose principal purpose is to support Critical Infrastructure Industry activities. Itron agrees with the CII Petitioners that implementing a freeze in the 900 MHz bands will result in severe hardship for the Critical Infrastructure Industries, which depend on private MAS networks for a variety of monitoring, safety, and system control purposes. Itron has filed a Petition for Emergency Relief explaining in more detail the impact that the freeze is having on AMR systems.

There is no convincing public interest justification, moreover, for imposing a freeze. The Commission has stated that it seeks to preserve spectrum in the event it later decides to adopt competitive bidding procedures in the band, but that rationale itself is questionable at best. The FNPRM itself suggests that it would be inappropriate to award spectrum in the band by competitive bidding;¹ the mutual exclusivity that

¹ FNPRM ¶ 24.

triggers the need for auctions is virtually non-existent in the 900 MHz bands; and in comparable circumstances the Commission recently chose not to institute a freeze.

I. The Freeze Will Severely Burden The Critical Infrastructure Industries, Which Provide Important Public Services.

The private, non-commercial MAS systems used by the Critical Infrastructure Industries play a vital role in protecting the public health, safety, and welfare. As the record in this proceeding reflects, MAS systems are used for supervisory control and data acquisition ("SCADA") and telemetry operations by utilities, pipelines and petroleum companies.² Electric utilities, for example, operate SCADA systems on MAS channels to remotely monitor and control critical power distribution functions throughout utility systems over large geographic areas.

Moreover, a rapidly growing number of utilities now are using automatic meter reading ("AMR") technologies developed by Itron, which operate on 900 MHz MAS channels.³ Itron now has over 14 million MAS receivers and transmitters deployed at more than 300 utilities throughout the United States. In addition, as a result of the application freeze in the 900 MHz band, Itron has a backlog of millions of dollars worth of equipment that has been rendered worthless, because the freeze stands in the way of obtaining the licenses needed to operate the equipment.

The requirements of the Critical Infrastructure Industries for MAS spectrum are expanding as the technological complexity of the underlying systems increases. Further, companies in these industries are finding that they can use their private communications networks to expand and improve the service that they provide to the public. The application freeze will stop these improvements in their tracks.

As the CII Petitioners demonstrate, moreover, commercial service providers do not offer the types of critical internal communications services needed by MAS users,

² See Emergency Petition at 10 n.13 (citing Comments of East Bay Municipal Utility District at p. 8; Delmarva Power and Light, p. 2; Southern California Edison at p. 2; Puget Sound Energy at p. 3; American Water Works Association at p. 10; American Petroleum Institute at p. 6; Washington Suburban Sanitary Commission at p. 6; Comsearch at p. 2; and Black & Associates at pp. 3-5).

³ Itron's AMR systems provide an extremely efficient method of data collection, which "benefit[s] consumers by reducing billing problems, increasing the accuracy of meter readings and, ultimately, lowering utility bills." In re Amendment of Sections 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies, 3 FCC Rcd 1564 (1988).

“nor are they likely to do so anytime in the foreseeable future.”⁴ Even if they did, however, obtaining these services on a commercial basis would raise a number of concerns. Because of the sensitivity of the information carried on private MAS networks, the need for an extremely high degree of reliability, and the likelihood that commercial systems will be most congested precisely when they are most needed (*i.e.*, in an emergency), it is unlikely that any commercial service could provide a satisfactory substitute for private MAS networks.

In short, by freezing applications for the 900 MHz MAS frequencies, the Commission has undermined the continued growth and development of private networks that provide essential public health, safety, and welfare benefits.

II. The Freeze Is Unwarranted.

In the FNPRM, the FCC expanded the MAS freeze to applications for the 900 MHz bands. The FNPRM suggests that the freeze is necessary to preserve the Commission’s licensing flexibility should it adopt “geographic licensing and auctions for these bands.”⁵ In fact, however, the freeze will have, at most, an inconsequential effect on the Commission’s future licensing of spectrum in these bands. Moreover, as the CII Petitioners convincingly demonstrate, the Commission does not have statutory authority to auction MAS licenses for the Critical Infrastructure Industries.⁶

The rationale for the 900 MHz freeze, apparently, is that the acceptance of new applications in the band will impair the “auctionability” of the spectrum. To the extent that this is a concern, it should quickly be set aside. In major metropolitan areas, where spectrum is most valuable, the 900 MHz MAS bands already are heavily used, and few available channels remain. Licensing new stations during the pendency of the FNPRM, therefore, would be confined principally to smaller markets, and would have little impact on the potential revenues that might be generated by competitive bidding for 900 MHz MAS spectrum.⁷

⁴ Emergency Petition at 12.

⁵ FNPRM ¶ 28.

⁶ Emergency Request at 4-9.

⁷ The FNPRM notes that the Commission has been receiving approximately 70 applications per month in this band. FNPRM ¶ 28 n.93.

MAS spectrum in these bands is not auctionable, moreover, because the band is used primarily by exempt "public safety radio services"⁸ and MAS applications generally have not been mutually exclusive.⁹ Indeed, the FNPRM suggests that it would be inappropriate to auction licenses in this band.¹⁰

Finally, the Commission recently declined to impose a freeze in comparable circumstances. In a rulemaking seeking to implement the Commission's expanded auction authority for wireless services under the Balanced Budget Act of 1997, the Commission imposed no freeze, and sought comment concerning various measures that might accomplish its objectives without the need for a freeze.¹¹ If the Commission saw no need for an immediate freeze in the wireless services generally, then it certainly should not be adopting a freeze in the wireless services whose principal use is for Critical Infrastructure Industries purposes.

In sum, the freeze on applications by companies in the Critical Infrastructure Industries will impose a severe hardship and disserve the public interest, but is unlikely to have any significant impact on future licensing in the band. The balance is not even a close one; the Commission should immediately lift the freeze on 900 MHz MAS applications.

⁸ Balanced Budget Act of 1997, Title III, § 3002; See also H.R. Rep. No. 105-217, at 572 (1997) ("[T]he exemption from competitive bidding authority for "public safety radio services" includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, or property and are not made commercially available to the public.").

⁹ 47 U.S.C. § 309(j)(1) & (j)(6)(E) ("Nothing in this subsection, or in the use of competitive bidding, shall be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.").

¹⁰ FNPRM ¶ 24.

¹¹ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, FCC 99-52 at ¶ 97 (Mar. 25, 1999).

CONCLUSION

For the reasons set forth above, Itron urges the Commission to grant the Emergency Request and to resume acceptance of 900 MHz applications involving utilities, pipelines, petroleum companies, and railroads.

Respectfully submitted,

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